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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,980	12/10/2003	Gerard Gieux	L741.03111	5130

7590 05/03/2005

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EXAMINER

DEVORE, PETER T

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/730,980	Applicant(s) GIEUX, GERARD	
	Examiner Peter T deVore	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2005.
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
 4a) Of the above claim(s) 3-5,8-15,21 and 22 is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1,2,6,7 and 16-20 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/6/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Species 2, shown in Figure 3 in the reply filed on 4/15/05 is acknowledged. The traversal is on the ground(s) that a search of the different species would overlap and would not be unduly burdensome. This is not found persuasive because in the Examiner's judgement based on experience examining this particular art, examining all twelve species of this particular invention would require substantial extra searching and would be unduly burdensome.

The requirement is still deemed proper and is therefore made FINAL.

Claims 3-5, 8-15, 21, and 22 are therefore withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected species, there being no allowable generic or linking claim. Note that claim 8 was improperly designated as generic by the Examiner in the previous Office Action, and does not read on the elected species.

Claim Suggestions

Although claims 13 and 14 are currently withdrawn from consideration, Examiner would like to point out that there is an antecedent basis problem for "said envelope" in line 4 of claim 13 and line 3 of claim 14. Should there be rejoinder upon an allowed generic claim, these claims would then be rejected under 35 U.S.C. 112 2nd paragraph unless this problem is corrected.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6, 7, and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the limitation "said grids" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 7 recites the limitation "said grids" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 17 recites the limitation "said envelope" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of Nadai.

The Miller reference discloses a powder applicator including a reservoir 22, storage means comprising foam pad 26, and a grid 30, but does not disclose a porous membrane covering the foam pad. However, the Nadai reference discloses a similar applicator including a porous membrane 8 covering the foam pad 7 to protect the foam pad from abrasion. It would have been obvious to employ a porous membrane to cover the foam pad of the Miller applicator in view of Nadai to protect the foam pad from abrasion.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of Nadai as applied to claim 2 above, and further in view of Bell.

The Miller reference discloses a powder applicator as discussed supra, but does not disclose that the orifices of the grids have a diminishing cross section away from the reservoir. However, the Bell reference discloses a similar applicator wherein the orifices (42, 44) have a diminishing cross section away from the pad to further control the flow rate of powder from the reservoir. It would have been obvious to modify the modified Miller applicator so that the orifices of the grids have a diminishing cross section away from the reservoir in view of Bell to further control the flow rate of powder from the reservoir.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of Nadai as applied to claim 2 above, and further in view of Lee.

The Miller reference discloses a powder applicator as discussed supra, but does not disclose a ring which clamps the membrane to the grid. However, the Bell reference discloses a similar applicator including a ring 541 which clamps membrane 40 to grid 60

to ensure that all powder leaving through the reservoir passes through the membrane. It would have been obvious to modify the modified Miller applicator to employ a ring which clamps the membrane to the grid in view of Lee to ensure that all powder leaving through the reservoir passes through the membrane.

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of Nadai as applied to claim 2 above, and further in view of Weihrauch.

Regarding claims 16 and 17, the Miller reference discloses a powder applicator as discussed supra, but does not disclose that the foam pad and membrane are mushroom shaped. However, the Weihrauch reference discloses a similar applicator wherein the applicator is mushroom shaped to maximize the application surface area (see Figure 4). It would have been obvious to modify the modified Miller applicator to have a mushroom shaped foam pad and membrane in view of Weihrauch to maximize the application surface area.

Regarding claim 18, the Miller reference discloses a powder applicator as discussed supra, but does not disclose that the exterior of the membrane is flocked. However, the Weihrauch reference discloses a similar applicator wherein the outer surface of the applicator is flocked (see col. 8, lines 55-57) to improve transfer of product from the applicator to the surface. It would have been obvious to modify the modified Miller applicator so that the outer surface of the membrane is flocked in view of Weihrauch to improve transfer of product from the applicator to the surface.

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of Nadai.

The Miller reference discloses an applicator as discussed supra, but remains silent as to the diameter and distribution of the pores in the pad. However, it would have been obvious to employ a pad having pores of a diameter and distribution within the claimed ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 2336.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T deVore whose telephone number is (571) 272-4884. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pd Pd

Per J. M. Van